IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5517 OF 2004
IN
CRIMINAL APPEAL NO.282 OF 2004

Rameshkumar Ukchand Hirani @ Jain. ...Applicant.
V/s.
The State of Maharashtra. ...Respondent

Mr.N.N. Gawankar i/b. Arfan Sait for Applicant.
Mr.K.V. Saste, A.P.P. for State.

CORAM : A.S. AGUIAR, J.
DATED : JANUARY 19, 2005.

P.C. :-

1. Heard learned Advocate for the applicant and learned A.P.P. for the State.

2. This is the third application for bail filed by the applicant before this Court. The first two applications were rejected on the ground that, on the facts of the case, the applicant was not entitled to bail. The present application proceeds on a different footing viz. that the applicant-appellant has undergone more than half the period of his sentence. Reliance is placed by the learned Advocate for the applicant on the order of this Court in Criminal Application No.5181-2003

in Criminal Appeal No.1343-2003 as well as order in Criminal Application No.4868-2003 in Criminal Appeal No.1340-2003. The orders in these two appeals were orders granting bail on the basis that the applicant had served more than half the sentence awarded and the Court had placed reliance on the observations of the Supreme Court in the case of **Bhagwan Rama Shinde V/s. State of Gujarat, reported in 1999 Cri.L.J. 2568,** wherein the Apex Court observed as follows:

> **"When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate Court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate Court must bestow special concern in the matter of suspending the sentence. So as to make the appeal right meaningful and effective. Of Course appellate Courts can impose similar conditions when bail is granted."**

3. In the present case also, the applicant has been convicted under the MCOC Act and sentenced to imprisonment for a fixed period of five years. The applicant has served more than two years nine months' imprisonment. The Appeal is admitted but its disposal will take sometime which may exceed the period of sentence awarded.

5. Learned A.P.P. on instructions confirms the period of sentence undergone by the applicant to be more than two years and nine months.

6. In the circumstances, Application allowed. Applicant be released on bail in the sum of Rs.50,000/- with one surety in like amount. Applicant will not leave the jurisdiction of this Court without permission of this Court. Applicant to report to Assistant Commissioner of Police, Byculla Division, Bombay, once a month and to Veperi Police Station, Veperi, Chennai, once a week. Applicant to surrender his passport to the Investigating Officer, Byculla Police Station.

. Application disposed of.

(A.S . AGUIAR, J.)